In the High Court of Punjab and Haryana at Chandigarh.

Civil Writ Petition No.11450 of 1995.

Date of decision:9-1-2008.

Kitab Singh

...Petitioner.

Versus

Presiding Officer, Labour Court and another.

...Respondents.

...

Coram: Hon'ble Mr. Justice K. C. Puri.

...

Present: Mrs.Abha Rathore Advocate for the petitioner.

Mr. R.S.Mittal, Senior Advocate with Mr.Atul Gaiur, Advocate for respondent No.2.

...

K. C. Puri, J.

Judgment.

In this petition filed under Articles 226/227 of the Constitution of India, the petitioner has challenged the legality of award dated 2.2.1995 passed by the Labour Court, Rohtak, Annexure P12. Consequently, the petitioner seeks quashing of the same.

It is pleaded by the petitioner that he was working with respondent No.2 since 1977 in the Parking Department. In the year 1988, he was charged with a false theft and was suspended. Considering his reply to be satisfactory, he was taken back in the service in the year 1990.

On 30.9.1992, again an allegation was levelled against him that he was trying to remove stolen articles. He was given beatings and was made to give his resignation. He was made to write whatever Mr. Pandey, Chief Security Officer and others wished.

It is further alleged by him that on 1.10.1992, he made a complaint by UPC to the Labour-cum-Conciliation Officer, Labour Inspector, Sonepat and the management regarding his harassment and forced resignation. Since the management refused to take the petitioner back on duty, he served demand notice asking for his reinstatement with full back wages. Respondent No.1 rejected the demand of the petitioner on the ground that since he has tendered his resignation himself, it was not a fit case to be referred to the Labour Court/Industrial Tribunal for adjudication. He filed an appeal against the said order but the same was also dismissed in May, 1993.

It is further alleged by the petitioner that he filed Civil Writ Petition No.10642 for referring his dispute to the Labour Court for adjudication. His writ petition was allowed and the matter was referred to the Labour Court for adjudication. The Labour Court dismissed his reference,vide award Annexure P12 which is under challenge in this writ petition.

Respondent No.2 contested the claim of the petitioner and filed written statement wherein it is pleaded that the present reference is not competent as it is neither a case of termination nor dismissal nor retrenchment. In the present case, resignation is involved which is not

covered under Section 2-A of the Industrial Disputes Act, 1947(in short the Act). It is further pleaded that the Government has rightly rejected the demand notice on the ground that the petitioner has himself left the service by tendering resignation. The petitioner was charge-sheeted in the year 1988. He tendered apology on the basis of which he was warned to be careful in future. The petitioner submitted his resignation on 1.10.1992 which was considered and accepted. Since the petitioner has himself resigned of his own free will, he was not entitled to the benefits of Section 25-F of the Act nor he was entitled to retrenchment compensation.

I have heard counsel for respondent No.2 and have gone through the record of the case.

Mrs. Abha Rathore, learned counsel for the petitioner has submitted that the controversy in the present writ petition is whether the petitioner has voluntarily resigned on 1.10.1992 as alleged by the management or was forcibly made to submit resignation. It is submitted that the petitioner has not voluntarily executed writing dated 1.10.1992 alleged to be a resignation letter. The petitioner has been serving the respondent since 1977. On 30.9.1992, the petitioner was detained by the Security Guard and was charged with trying to remove stolen articles in a bag from the closed gate of the factory. He was given beatings and writing regarding resignation was taken, but afterwards the petitioner on 1.10.1992 made a complaint to Labour-cum-Conciliation Officer, Sonepat and the Labour Inspector, Sonepat. News item also appeared in the newspaper. The petitioner again on 7.10,1992, vide Annexure P-3, made a complaint to the

Chief Minister, Labour Minister, Labour Commissioner, Deputy Commissioner, Sonepat, and the Superintendent of Police, Sonepat for taking action against the respondent. Detailed facts regarding taking forcible resignation were mentioned in the request made to the Chief Minister. The petitioner raised demand under Section 2-A of the Act on 13.10.1992. That reference was declined by the Government vide letter dated 11.1.1993. The petitioner approached the High Court for getting that order set aside. The High Court was pleased to set aside that order and the matter was referred to the Labour Court. The Labour Court has not properly gone into the facts of the case. The Labour Court has committed grave error in not accepting the reference. Had the petitioner given resignation voluntarily on 1.10.1992 as alleged by the respondent, in that case, he would not have raised the dispute on 1.10.1992 itself by sending protest letter to the management. The Labour Court has simply dismissed the reference on the ground that in demand notice no fact regarding torture and taking signatures on the resignation has been mentioned and on that count it is not proved that the workman was tortured and made to resign. This finding of the Labour Court is erroneous. The petitioner has raised the grievance on 1.10.1992 itself by making application, Annexure P-2 to the management, Atlas Cycle Industries, Sonepat. Copies of the same were forwarded to the Labour Officer and the Labour Inspector, Sonepat. Again detailed facts about torture were mentioned in the letter, Annexure P-3 addressed to the Chief Minister. So, in these circumstances, the fact in the demand notice under Section 2-A of the Act, the factum of torture has not

been mentioned does not lead to the conclusion that the petitioner has not been tortured and made to resign. The petitioner is a weak workman. The Labour Court has lost sight that the Industrial Disputes Act has been enacted with a underline idea to give protection to the workman from the organized employer. The Labour Court has thrown the case of the petitioner on technical grounds rather than the merits of the case. The fact that all these grievances were made immediately after 1.10.1992 goes a long way to prove the fact that the petitioner has not voluntarily resigned on 1.10.1992. Once the Court comes to the conclusion that the petitioner has not resigned on 1.10.1992, the petitioner is entitled to re-instatement with full back wages.

Mr. R.S.Mittal, Senior Advocate, counsel for respondent No.2 has supported the award of the Labour Court. He has submitted that the Labour Court has rightly come to the conclusion that the petitioner has voluntarily resigned from the post on 1.10.1992. There is no medico-legal examination of the petitioner to warrant the conclusion that he has been tortured as alleged by him. According to the petitioner, a live wire current was used on him to extract resignation. It is further alleged that wire has been put around his neck, but, no medical evidence or other evidence has been placed on the file. The petitioner has voluntarily resigned but out of greed, he has wrongly taken the stand that he was forcibly made to resign.

It is further submitted that the conduct of the petitioner is bad from the very beginning. Previously, he committed theft in the factory but was allowed to remain in service after giving him warning. The petitioner

even thereafter indulged in theft activities.

It is also submitted that the petitioner has not pleaded the factum of torture in his demand notice dated 13.10.1992. Even in the reference made before the Labour Court, the petitioner has not pleaded that he was forced to resign on 1.10.1992 under threat. The Labour Court, after appreciating the evidence before it, came to the conclusion that the petitioner has failed to prove that he was forced to resign. That becomes a finding of fact and as such cannot be interfered with in the writ jurisdiction. To support his contention, the learned counsel for the respondent has relied upon authority reported as **Amrit Vanaspati Co. Ltd. Versus Khem Chand and another,** (2006) 6 Supreme Court Cases 325 and **Syed Yakoob v. K. S. Radhakrishnan and others,** AIR 1964 Supreme Court 477.

I have carefully considered the submissions made by both sides and have gone through the record of the case.

The main controversy in the present lis is whether the petitioner has voluntarily resigned on 1.10.1992 as alleged by the respondent or was forced to resign as alleged by the petitioner and that whether the finding of the Labour Court that the petitioner has voluntarily resigned stand the test of legal scrutiny.

The main ground for dis-believing the stand of the workman was that in the reference under Section 2-A of the Act and in the petition, the factum of torture and extracting resignation has not been mentioned and on that count it was presumed that the petitioner has voluntarily resigned. The learned Labour Court has ignored the underline idea for which the

Industrial Disputes Act has been enacted. The Parliament in its wisdom has enacted the Industrial Disputes Act to protect the un-organized workmen from the mighty and organized employer. The exploitation of the workmen is required to be curbed is the basic idea of enactment of the above-said welfare legislation.

The respondent has taken a stand that the petitioner earlier indulged in theft activities and for that purpose he was given warning but was retained in the service. No-doubt, in case the employee loose the confidence of the employer, in that case, normally he should not be allowed to remain in service but in that case proper enquiry has to be conducted against the workman. It is not the case of the respondent in the written reply that the petitioner has resigned as he was caught stealing. Had the case of the respondent been that the petitioner has resigned as he was caught stealing, in that case, the matter would have been different. Since that said stand has not been taken by the respondent, as such the past act of alleged theft by the petitioner is immaterial for the decision of the present case. The service of workman could be terminated on the charge of theft after conducting proper enquiry only. The stand taken by the respondent that the petitioner voluntarily resigned does not appeal to reason. Had the petitioner resigned voluntarily on 1.10.1992, in that case, he would not have complained on 1.10.1992 itself to the Management with copy to Labour Inspector and Labour Officer-cum- Conciliation Officer, Sonepat by UPC letter, Annexure P-2. On 7.10.1992,the petitioner submitted an application to the Chief Minister, Haryana, with a copy to the Labour Minister,Haryana,

Labour Commissioner, Deputy Commissioner, Sonepat, Superintendent of Police, Sonepat, Labour Officer, Sonepat and the management of Atlas Cycle, Sonepat complaining about his forcible resignation on 30.9.1992. The petitioner raised demand under Section 2-A on 13.10.1992 itself i.e. about 13days of the alleged letter of resignation. The reference was declined by the Government. The petitioner approached the High Court. That request of the petitioner was accepted by the High Court. The sequence of events placed on the file lead to the only conclusion that the petitioner has not voluntarily resigned on 1.10.1992 but was forced to resign and that amounts to termination of service of the petitioner without complying with Section 25-F.

So far as the authorities reported as **Amrit Vanaspati Co. Ltd. and Syed Yakoob** (supra) are concerned, the same are distinguishable to the facts of the present case. No doubt, the writ Court cannot interfere in respect of findings of fact, but, where the High Court comes to the conclusion that the Labour Court has ignored the material evidence while deciding the case, in that case, the High Court can interfere. The petitioner would not have raised grievance on 1.10.1992 itself regarding his forcible resignation, had he voluntarily resigned. The petitioner has been in service since 1977 and what made the petitioner to resign on 1.10.1992 has not been explained by the management. Mere fact that no medico-legal examination has been placed on the file does not lead to the conclusion that the petitioner was not made to resign. The petitioner might have exaggerated about the torture but the fact remains that the circumstances

only lead to the conclusion that the petitioner has not resigned voluntarily on 1.10.1992 . So, the services of petitioner would be deemed to have been terminated on 1.10.1992 without complying with Section 25-F of the Act. The impugned order of the Labour Court is bad on that count.

The award of the Labour Court dated 2.2.1995 stands set aside and it is ordered that the petitioner be re-instated in service. Previously, the trend of authorities was to allow full back wages in case of re-instatement but recently the Hon'ble Apex Court in authorities reported as **U.P. State Brassware Corporation Limited Vs.Udai Narain Pande,** AIR 2006 Supreme Court 586; **URPSRTC Vs. Mitthu Ram,** AIR 2006 Supreme Court 3018 and **Municipal Council Sujanpur Vs. Surinder Kumar**, 2006 Vol.I Supreme Court Cases 173 has held that grant of back wages is not automatic and the onus is upon the workman under Section 106 of the Indian Evidence Act to prove that he was not gainfully employed. So, in these circumstances, the respondent No.2 is directed to pay 25% of the back wages.

This writ petition is disposed of in the manner indicated above.

January 9 ,2008. (K. C. Puri)
Jaggi Judge